

DANIEL K R KINSEY

BARRISTER-AT-LAW

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PROFESSIONAL DETAILS

Admitted as an Australian Lawyer:	13 December 2011
Signed Victorian Bar Roll:	5 May 2016 (Victorian Bar Roll No. 4846)
Qualifications:	BA, LLB (Hons) (Melb), GDLP, LLM (Class I) (Cantab)
Other legal positions:	Reporter, <i>Victorian Reports</i>
Previous legal positions:	Honorary Fellow, Melbourne Law School, University of Melbourne (2021-2022) Judge's Associate, Court of Appeal (2014, 2015-2016) Judge's Associate, Supreme Court of Victoria (2012-2014) Tutor in Law, Ormond College (2014, 2015-2016) and Queen's College (2013-2014), University of Melbourne Solicitor (previously, Law Graduate), Allens (2011-2012)

AT THE BAR

- Broad practice encompassing commercial law, common law, and criminal law:
 - Intentional torts (eg malicious prosecution, false imprisonment, assault, battery), including institutional abuse and experience with the *Legal Identity of Defendants (Organisational Child Abuse) Act 2018* (Vic);
 - Wills, probate, testators family maintenance (TFM), and guardianship;
 - Equity and trusts, including advising upon trusts and corporations law matters in the context of family law disputes;
 - Negligence (including workplace serious injury), product liability, occupier's liability, motor vehicle, and general insurance;
 - Contract, debt, consumer law, property, and *Corporations Act* (including oppression and insolvency matters);
 - Interlocutory applications, including freezing orders and costs disputes;
 - Intervention orders (family violence and personal safety); and
 - Bail applications, offences against property and persons, and motor vehicle offences.
- Regularly appearing in all Victorian courts (at first instance, and on appeal), the VCAT, federal courts, and at mediations.
- Regularly drawing pleadings, interrogatories, and other court documents, and preparing written advices.
- Recent published decisions include:
 - *Setka v Dalton (No 2) (Legal professional privilege)* [2021] VSC 604 (Legal professional privilege – Application for production of documents by plaintiff – Whether sufficient evidence to support claims for legal professional privilege – Challenges to claims for advice privilege upheld in part) (led by F K Forsyth QC)
 - *Setka v Dalton* [2020] VSC 521 (Practice and procedure – Defendants' application to strike out plaintiffs' statement of claim – False imprisonment – Malicious prosecution – Application dismissed with leave to replead granted to clarify aspects of plaintiffs' claims) (led by F K Forsyth QC)

- *PharmX Pty Ltd (in its capacity as trustee of the PharmX Unit Trust) v Fred IT Group Pty Ltd (No 3)* [2019] VSC 748 (Contract – Construction of shareholders’ agreement and of unit trust deed – Entitlement to unpaid income distribution) (for the successful Fourth Defendant, led by T P Murphy QC)
- *Demediuk v Demediuk* [2019] VSCA 79 (Probate – Part of original will missing – Presumption of revocation – Interlocutory appeal of refusal of Amended Grounds of Objection to grant of probate) (led by R C Wells)
- *Jieyun International Investments Pty Ltd v Toorak Development Group Pty Ltd & Ors* (Unreported, Supreme Court of Victoria, Lyons J, 9 April 2019) (Freezing order – worldwide – applicant successful) (led by P J Hayes QC)
- *Bullhead Pty Ltd v Brickmakers Place Pty Ltd (in liq) [No 2]* [2019] VSCA 7 (Practice and procedure – premature disclosure of offer of compromise before relief determined – interest – costs) (led by W T Houghton QC)
- *Bullhead Pty Ltd v Brickmakers Place Pty Ltd (in liq)* [2018] VSCA 316 (Trusts – release of defaulting trustee unenforceable – respondents not entitled to rely on estoppel due to lack of clean hands) (led by W T Houghton QC)
- *Jieyun International Investments Pty Ltd v Toorak Development Group Pty Ltd & Ors* (Unreported, Supreme Court of Victoria, Lyons J, 23 August 2018) (Freezing order – applicant successful) (led by P J Hayes QC)
- *Bullhead Pty Ltd v Brickmakers Place Pty Ltd (in liq)* [2018] VSCA 50 (Practice and procedure – Application by respondents for security for costs of appeal) (led by W T Houghton QC)
- *Vale v Daumeke & Ors* (2017) 323 FLR 418; [2017] VSC 467 (Tort – personal injury – foreign state immunity) (led by P J Hayes, with T Antos)

BEFORE BEING CALLED TO THE BAR

Associate to the Reserve Judges

Court of Appeal, Supreme Court of Victoria (Feb – Sep 2014, Sep 2015 – Mar 2016)

- Assisted the Hon Justice Ashley on a wide variety of criminal and civil appeals, including reported decisions on defamation and company directors’ privilege against self-incrimination.
- Assisted the Hon Justice Bongiorno AO and the Hon Justice Coghlan in a wide variety of criminal matters, including homicide trials, criminal appeals, bail hearings, applications under the *Crimes (Mental Impairment) Act*, criminal case conferences, and applications under the *Surveillance Devices Act* and the *Major Crime (Investigative Powers) Act*.

Associate to the Hon Justice Robson

Supreme Court of Victoria (Aug 2012 – Feb 2014)

- Assisted his Honour in a wide variety of cases, primarily in commercial matters involving the law of corporations, insolvency, contract, and equity and trusts.
- Representative matters include litigation arising out the insolvency and restructuring of a major managed investment scheme, litigation involving alleged contraventions of the *Legal Profession Act*, and trials alleging fraud, breach of contract, and misleading and deceptive conduct.

Solicitor (previously, Law Graduate)

Allens (Feb 2011 – Aug 2012)

- Worked in the Commercial Litigation and Dispute Resolution group. Representative matters included
 - an action brought by a major manufacturer of consumer goods in the High Court of Australia concerning the constitutional validity of a significant piece of federal legislation, and an associated international investment arbitration; and
 - defending a class action brought against a major pharmaceutical company.

- Worked in the Funds Management team (within the M&A group). Representative matters included advising on:
 - the interaction of superannuation and tax legislation;
 - trust structures; and
 - the implications of a defensive homicide conviction for a residuary legatee.

EDUCATION

Master of Law (conferred 24 June 2015)

Pembroke College, University of Cambridge, Cambridge, United Kingdom

Honours: Awarded First Class Honours; ranked 6th in LLM class of 131 students

Foundation Scholarship and College Prize (Law) (Pembroke College)

Davis McCaughey Cambridge Australia Scholar (Cambridge Trust)

Awarded highest mark in Intellectual Property course (by thesis entitled ‘The Protection of Cultural Heritage’, supervised by Prof Lionel Bently)

Graduate Diploma of Legal Practice (conferred 16 November 2011)

The College of Law, Melbourne, Australia

Bachelor of Laws with Honours and Bachelor of Arts (conferred 22 December 2010)

University of Melbourne, Melbourne, Australia

Honours: Awarded First Class Honours

Transport Accident Commission Prize (for highest mark in Advocacy course, 2009)

Melbourne Global Mobility Scholarship (for academic merit, 2009)

Certificate in Transnational Legal Studies (exchange to Georgetown University’s Center for Transnational Legal Studies, London, conferred 18 June 2010)

SELECTED PUBLICATIONS AND PRESENTATIONS

Publications

- ‘Joint Acquisition and Co-ownership Agreements: An Introductory Guide’, *Art Antiquity and Law* (accepted)
- ‘Reflections on Selected Legal Aspects of the Development of Northern Australia’, in *Northern Development – Creating the Future Australia* (ADC Forum, 2015) (editor, and coauthor with T Goodwin and E Boutard)
- ‘High Court denies special leave in Vioxx litigation’ (2012) 22(8) *Australian Product Liability Reporter* 264 (with P O’Donahoo and N Guadagno)
- ‘The Vioxx Appeal – a bitter pill for pharmaceutical class actions?’ (2012) 22(6) *Australian Product Liability Reporter* 234 (with P O’Donahoo)
- ‘UK National Security Concerns Trump Freedom of Expression’ (2012) 73 *Human Rights Law Centre Rights Agenda* 28
- ‘An Overview of Product Liability Law in Australia’, in A McDougall & P Popat (eds), *International Product Law Manual* (Kluwer Law International, 2011) (with P O’Donahoo, P Wood and P Harris)
- “‘Undertake Further Consultation’” (2011) 16(1) *Art Antiquity and Law* 25

Conference and Seminar Presentations

- ‘Contractual Penalties, Unfair Contracts and Unconscionable Conduct – The State of Play in 2019’, CPD seminar at Leo Cussen Centre for Law’s Commercial Disputes Conference (Melbourne, 23 October 2019)
- ‘Owen Dixon: Man, Portrait, Artefacts, Building’, Peter O’Callaghan QC Gallery Law Week Talk 2019 (Melbourne, 16 May 2019)

- ‘The latest in Succession Law cases and legislation’, CPD seminar at the Law Institute of Victoria’s Succession Law Intensive (Melbourne, 22 March 2019) (with R C Wells)
- Invited panelist, ‘Words Without Borders: Defamation and the Internet’, Hong Kong 2018 International Commercial Law Conference (Hong Kong, 21-22 September 2018)
- Conference co-organiser, ‘Art & Law: Art in Peril’, an interdisciplinary conference at Pembroke College, Cambridge (22-23 July 2015)
 - Presenter, ‘Some Problems of Protecting Privately Owned Portable Cultural Treasures’
 - Panel Chair, ‘The Perpetual Casualty?’ [cultural property and armed conflict]
- Presentations to students enrolled in the Diploma in Law and Collections Management course taught by the Institute of Art and Law (in conjunction with the Australasian Registrars’ Council)
 - ‘Co-ownership and Joint Acquisition Contracts’ (Melbourne, 2015; London, 2015; Brisbane, 2014; Sydney, 2013; Melbourne, 2012; Sydney, 2011)
 - ‘The *Personal Property Securities Act 2009* (Cth): or How I Learnt to Start Worrying and “Register and Perfect” My Security Interests’ (Melbourne, 2015)

COMMUNITY AND PERSONAL

- Honorary Fellow, Melbourne Law School, University of Melbourne (2021 – 2022)
 - Teaching: Equity and Trusts (JD) (Sem II, 2021)
- Member, Art and Collections Committee, Victorian Bar (2017 – 2022)
- Member, Victorian Bar’s Commercial Bar Association and Common Law Bar Association
- Occasional manuscript reviewer, *Media & Arts Law Review* (LexisNexis)
- Winner, Young CommBar Hong Kong Speaking Competition (2018)
- Winner, Victorian Bar Junior Advocacy Competition (2016) and Victorian Representative, Australian Bar Association National Advocacy Competition (2016)
- Secretary, University of Cambridge Graduate Law Society (2014 – 2015)
- Founding Member of BottledSnail Productions, Inc (a performing arts company aimed at promoting mental health within the legal profession)

LANGUAGES

English (native)
 Polish (fluent)